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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/392,243	09/09/1999	JOHN H. LEE	27338	9819

7590

01/11/2002

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EXAMINER

PRATS, FRANCISCO CHANDLER

ART UNIT

PAPER NUMBER

1651

jv

DATE MAILED: 01/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/392,243

Applicant(s)

LEE ET AL.

Examiner

Francisco C Prats

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 1-20 and 28-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2, 3.
- ☐ Interview Summary (PTO-413) Paper No(s). _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

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DETAILED ACTION

Claims 1-35 are presented for examination.

Election/Restrictions

Claims 1-20 and 28-35 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 11, filed December 21, 2001.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35

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U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 21-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Gorp et al (U.S. Pat. 5,607,840) in view of Balslev et al (U.S. Pat. 4,438,100) and Oles (U.S. Pat. 4,145,451).

Van Gorp discloses a process wherein a mucosal protein hydrolysate is added to protein-containing food or feed. Van Gorp also discloses the preservation of the mucosa starting material using well known preservatives. See col. 4, lines 17-34 and 45-50. Note specifically Van Gorp's disclosure of the suitability of a heating step in the preservation methods as recited in applicant's claim 24. Note further that because it contains the same material, mucosa, Van Gorp's preserved product would inherently have the same ash amount as recited in the claims.

Van Gorp differs from the claims in that Van Gorp does not use the claimed peroxide or phosphoric acid as a preservative. However, each of Oles (see, e.g., abstract) and Balslev (see, e.g., abstract) make it clear that both phosphoric acid and peroxide were well known preservatives in food and/or pharmaceutical applications. Thus, the claimed substitution of well known preservatives for those used in Van Gorp must be

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considered an obvious substitution of one known equivalent preservative for another. That is, because the artisan of ordinary skill at the time of applicant's invention would have had a reasonable expectation from Oles and Balslev that phosphoric acid and/or peroxide would have functioned equivalently to the preservatives disclosed by Van Gorp, the artisan of ordinary skill would have been motivated to have substituted Oles' phosphoric acid and/or Balslev's peroxide for the preservatives disclosed by Van Gorp.

Lastly, it is noted that Van Gorp does not disclose the bacterial count of the preserved mucosa product, as recited in applicant's claims 26 and 27. However, because the entire objective of adding preservatives according to Van Gorp's disclosure is the prevention of bacterial growth in the mucosa products, it is respectfully submitted that the determination of an acceptable degree of preservation as measured by bacterial contamination would have been a matter of routine optimization on the part of the artisan of ordinary skill, the degree of bacterial contamination clearly being a result-effective parameter optimized by adding more or less preservative agent. Thus, absent some demonstration of an unexpected result inhering from the claimed process, a holding of obviousness under § 103(a) is clearly required.


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No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francisco C Prats whose telephone number is 703-308-3665. The examiner can normally be reached on Monday through Friday, with alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on 703-308-4743. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3014 for regular communications and 703-305-3014 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.


Francisco C Prats
Primary Examiner
Art Unit 1651

FCP
January 7, 2002